

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SAM SMITH (#241580),

Plaintiff,

v.

LEERAY STEPHENS,
JOHN DOE, ALI MUHAMMAD,
ALICIA SMITH, BRIAN STAIR,
and KYM WORTHY,

Defendants,

CASE NO. 2:10-CV-13763
JUDGE PAUL D. BORMAN
MAGISTRATE JUDGE PAUL J. KOMIVES

Proof of Service

The undersigned certifies that a copy of this Order was served on the attorneys and parties of record herein by electronic means and First Class U.S. Mail on **March 12, 2012.**

s/Kim Grimes
Acting in the absence of
Eddrey Butts, Case Manager

**ORDER DENYING PLAINTIFF'S AUGUST 8, 2011 MOTION
FOR SERVICE BY THE U.S. MARSHAL (Doc. Ent. 39)**

A. Plaintiff's Original Complaint Was Filed on September 21, 2010.

Plaintiff filed his original complaint on September 21, 2010 against six (6) defendants: Leeray Stephens, John Doe, Ali Muhammad, Alicia Smith, Brian Stair and Kym Worthy. Doc. Ent. 1 at 4-5 ¶¶ 2-7. On September 28, 2010, this Court entered an order directing service without prepayment of costs and authorizing the United States Marshal to collect costs after service is made. Doc. Ent. 5. That same day, the U.S. Marshal acknowledged receipt of five (5) copies of documents for service of process. Doc. Ent. 6. On September 29, 2010, the U.S. Marshal attempted service upon defendants by mail. Stair and Muhammad (Doc. Ent. 7), Alicia Smith (Doc. Ent. 12), Stephens (Doc. Ent. 14) and Worthy (Doc. Ent. 15) have filed answers to the original complaint.

B. Plaintiff's August 8, 2011 First Amended Complaint Has Been Stricken.

In his August 8, 2011 first amended complaint, plaintiff again names as defendants Stephens, Doe, Muhammad, Alicia Smith, Stair and Worthy (Doc. Ent. 36 ¶¶ 7-12) but also adds defendant Maria A. Petito, who plaintiff claims was a Wayne County Assistant Prosecuting Attorney (Doc. Ent. 36 ¶ 13). Stephens, Stair, Muhammad and Alicia Smith filed an answer to the first amended complaint on August 24, 2011. Doc. Ent. 44.

However, on March 2, 2012, I entered an order (Doc. Ent. 55) granting the August 24, 2011 motion to strike plaintiff's first amended complaint (Doc. Ent. 43) and directing the Clerk of the Court to strike plaintiff's August 8, 2011 first amended complaint (Doc. Ent. 36).

C. Instant Motion

Currently before the Court is plaintiff's August 8, 2011 motion for service of the First Amended Complaint upon proposed defendant Petito by the U.S. Marshal. Doc. Ent. 39; *see also* Doc. Ent. 40 (Certificate of Service). According to plaintiff, he "has filed with the Court an extra copy of his First [Amended] Complaint for service on Defendant Petito by [the] U.S. Marshal." Doc. Ent. 39 ¶ 4.

In light of the Court's March 2, 2012 order (Doc. Ent. 55) striking plaintiff's August 8, 2011 first amended complaint (Doc. Ent. 36), plaintiff's August 8, 2011 request for service of the First Amended Complaint upon proposed defendant Petito by the U.S. Marshal will be denied. However, such denial is without prejudice to plaintiff renewing his request if plaintiff is successful in amending his complaint to name Petito as a defendant. *See, i.e.*, Doc. Ent. 51 (Plaintiff's September 27, 2012 Motion for Leave to File First Amended Complaint).

D. Order

Accordingly, plaintiff's request for an order requiring the U.S. Marshal to effect service of the August 8, 2011 First Amended Complaint upon proposed defendant Petito (Doc. Ent. 39) is DENIED WITHOUT PREJUDICE to renewal if plaintiff is successful in amending his complaint to name Petito as a defendant.

IT IS SO ORDERED.

The attention of the parties is drawn to Fed. R. Civ. P. 72(a), which provides a period of fourteen (14) days from the date of service of a copy of this order within which to file an appeal for consideration by the district judge under 28 U.S.C. § 636(b)(1).

Dated: <u>March 12, 2012</u>	<u>s/Paul J. Komives</u> PAUL J. KOMIVES UNITED STATES MAGISTRATE JUDGE
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